

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

**UNITED STATES OF AMERICA,**

Plaintiff,

**HONORABLE PAUL D. BORMAN**

v.

**No. 14-20779**

**No. 15-20311**

**ARIA OMAR SABIT,**

Defendant.

**EXCERPTS OF PLEA HEARING**

**Friday, May 22, 2015**

**4:10 p.m.**

**APPEARANCES:**

For the Plaintiff:

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(Appearances continued)

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PLEA HEARING

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May 22, 2015

Detroit, Michigan

- - -

(Call to order of the Court, 4:10 p.m.)

(Court, Counsel and Defendant present.)

THE COURT CLERK: Now calling the case of *United States of America versus Aria Omar Sabit, M.D.*, Case Numbers 14-20779 and 15-20311.

THE COURT: Okay. Parties please identify themselves for the record beginning with the government.

MS. MCCULLOUGH: Good afternoon, Your Honor. May it please the Court, Regina McCullough appearing on behalf of the United States.

MR. ROSS: Philip Ross, forfeiture counsel, appearing on behalf of the United States.

MR. BAUM: Jonathan Baum appearing on behalf of the United States.

THE COURT: Okay.

MR. LESSING: Good afternoon.

THE COURT: Very good. Good afternoon, sir.

MR. LESSING: Good afternoon, Your Honor. Timothy Lessing appearing on behalf of Mr. Aria Sabit who is to my right.

THE COURT: Good afternoon, Dr. Sabit.

MR. NISKAR: May it please the Court, Joseph Niskar on

## PLEA HEARING

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1     behalf of Dr. Sabit.

2             THE COURT: Very good. Have a seat for a minute. Let  
3     me just put things together here.

4             Should we take the forfeiture bill of particulars  
5     first? That would seem to be getting that out of the way.

6             MR. NISKAR: No objection to that.

7             THE COURT: Okay. Then why don't you and your client  
8     come to the podium and we'll proceed.

9             Why don't you proceed, Mr. Ross, and then we'll go  
10    over it with Dr. Sabit and his attorneys.

11            MR. ROSS: Thank you, Your Honor.

12            As part of the Rule 11 plea agreement, the Defendant  
13    has agreed to forfeit proceeds from the private sale of the  
14    home at 3645 Lahser Road in Bloomfield Hills. That property  
15    description is included on page 25 of the Rule 11 plea  
16    agreement.

17            Also on page 25 of the Rule 11 plea agreement, the  
18    Defendant has entered into an agreement to forfeit funds from  
19    four separate bank accounts that are listed, three at Comerica  
20    and one at PNC.

21            Also, with respect to the forfeiture, the Defendant  
22    has waived any challenge he may have that the forfeiture  
23    constitutes an excessive fine under the Eighth Amendment. He  
24    also agrees to enter a number of documents related to the  
25    forfeiture at or before sentencing, and he understands that

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1 forfeiture is part of the sentence and that he waives his right  
2 to have that included in the judgment or orally pronounced at  
3 the time of sentencing.

4 THE COURT: Okay. Counsel, which one of you will be  
5 representing Dr. Sabit on this forfeiture matter?

6 MR. LESSING: Mr. Niskar will, Your Honor.

7 MR. NISKAR: I will, Your Honor.

8 THE COURT: Okay. Mr. Niskar, have you gone over this  
9 forfeiture bill of particulars with Dr. Sabit?

10 MR. NISKAR: I have.

11 THE COURT: Okay. Dr. Sabit, have you gone over the  
12 forfeiture bill of particulars with Mr. Niskar?

13 THE DEFENDANT: I have.

14 THE COURT: And you understand that you're going to  
15 forfeit the home on Lahser Road in Bloomfield Hills. Is that  
16 correct, sir?

17 MR. NISKAR: He's forfeiting his interest in the  
18 proceeds.

19 THE COURT: Okay. Your interest in the proceeds of  
20 the home?

21 MR. NISKAR: That's right.

22 THE COURT: The home will be sold; is that what you're  
23 saying?

24 MR. NISKAR: Yes.

25 THE COURT: And you're also forfeiting your interest

## PLEA HEARING

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1 in the four bank accounts, three at Comerica and a fourth at  
2 PNC. Is that correct, Doctor?

3 THE DEFENDANT: It is.

4 THE COURT: Okay. Mr. Ross, are there any questions  
5 that you want to further ask to establish a factual basis  
6 additionally with regard to the forfeiture?

7 MR. ROSS: No, Your Honor.

8 THE COURT: Okay. Then I will -- if you'll present an  
9 order, then I will sign that. It is on the record.

10 MR. ROSS: Thank you, Your Honor.

11 THE COURT: Okay. Then let us proceed to the other  
12 matter. My understanding, Mr. Niskar and Mr. Lessing, is that  
13 your client wishes to enter pleas as to two separate  
14 prosecutions, one here and the other from the Central District  
15 of California. Is that correct?

16 MR. NISKAR: That is correct.

17 MR. LESSING: That's correct, Your Honor.

18 THE COURT: Okay. Ms. Tofil, if you'd please swear in  
19 Dr. Sabit, we'll proceed.

20 THE COURT CLERK: Raise your right hand.

21 (**Dr. Aria Sabit**, sworn, 4:14 p.m.)

22 THE COURT: Okay. Dr. Sabit, I'm going to question  
23 you regarding the facts of the crimes charged. It's important  
24 that you tell the truth. You understand that, sir?

25 THE DEFENDANT: I do.

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1 THE COURT: Okay. Any false answers can be used  
2 against you in a separate prosecution for perjury, so it's  
3 important to tell the truth. You understand?

4 THE DEFENDANT: I do.

5 THE COURT: Okay. What is your full name?

6 THE DEFENDANT: Aria Omar Sabit.

7 THE COURT: Okay. You understand that you have a  
8 constitutional right to remain silent and not incriminate  
9 yourself?

10 THE DEFENDANT: I do.

11 THE COURT: And you want to give that up and plead  
12 guilty today; is that correct, sir?

13 THE DEFENDANT: Yes.

14 THE COURT: First I'm going to ask some background  
15 questions to assure that you're competent to enter a plea at  
16 this time. How old are you, sir?

17 THE DEFENDANT: 39.

18 THE COURT: And how far did you go in school?

19 THE DEFENDANT: Medical school.

20 THE COURT: Okay. Do you read, write and understand  
21 the English language?

22 THE DEFENDANT: I do.

23 THE COURT: Are you now under the influence of any  
24 medication, drugs or alcohol?

25 THE DEFENDANT: I'm not.



PLEA HEARING

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1 THE COURT: I find that Dr. Sabit is capable of  
2 entering a knowing plea. Do you agree, Mr. Niskar?

3 MR. NISKAR: I agree.

4 THE COURT: Do you agree, Miss McCullough?

5 MS. MCCULLOUGH: Yes, Your Honor.

6 THE COURT: You have your attorneys beside you in  
7 court today. Have you discussed this matter with them?

8 THE DEFENDANT: Yes.

9 THE COURT: Are you satisfied with their advice and  
10 service?

11 THE DEFENDANT: I am.

12 THE COURT: Do you understand that if your guilty plea  
13 is accepted, you give up valuable civil rights, such as the  
14 right to vote, hold office, serve on a jury, possess or be  
15 around firearms. You understand that?

16 THE DEFENDANT: I do.

17 THE COURT: Okay. If I accept your plea of guilty,  
18 you give up many important constitutional rights, and I'll go  
19 over some of the most important to make sure you understand  
20 what you're giving up.

21 You understand, sir, that you have the right to plead  
22 not guilty and to have a trial before the Court or a jury of 12  
23 citizens?

24 THE DEFENDANT: I do.

25 THE COURT: You understand at trial you'd be presumed

## PLEA HEARING

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1 innocent and the government would have to prove you guilty  
2 beyond a reasonable doubt. You understand that, sir?

3 THE DEFENDANT: Yes.

4 THE COURT: Also at trial, you could question  
5 witnesses against you through your attorneys and have the Court  
6 order any witnesses you want for your defense to appear at  
7 trial. You understand that, sir?

8 THE DEFENDANT: I do.

9 THE COURT: Also at trial you could remain silent  
10 during the trial, not have your silence used against you or  
11 testify if you want to testify. You understand that?

12 THE DEFENDANT: I do.

13 THE COURT: Understanding these rights, do you want to  
14 give them up and plead guilty today?

15 THE DEFENDANT: I do.

16 THE COURT: Okay. Have you received copies of the  
17 indictments, the charges against you, in this case?

18 THE DEFENDANT: Yes, I have.

19 THE COURT: There's one from California and one from  
20 Southern Division of Michigan. And I presume that the doctor  
21 has been arraigned on both indictments?

22 MR. NISKAR: He was this afternoon.

23 MS. MCCULLOUGH: Your Honor --

24 MR. NISKAR: I'm sorry.

25 MS. MCCULLOUGH: Just for the record, they are

## PLEA HEARING

11

1 | informations, Your Honor, and he was arraigned this afternoon  
2 | on both informations and did execute a waiver of indictment.

3 | THE COURT: Okay. So we have an information from  
4 | California that's CR-0258. That's the California number. And  
5 | the number here is 15-20311. Is that correct?

6 | MS. MCCULLOUGH: That's correct, Your Honor.

7 | MR. LESSING: That's correct.

8 | THE COURT: And the Michigan one is 14-20779. Is that  
9 | correct?

10 | MS. MCCULLOUGH: That is correct, Your Honor.

11 | THE COURT: Okay. Then, first, with regard to the  
12 | Rule 11, let me just look at it. The counts of conviction in  
13 | the Michigan case will be Counts 1, 2, 3, 4 and 5 of the first  
14 | superseding information. Is that correct, Miss McCullough?

15 | MS. MCCULLOUGH: That's correct.

16 | THE COURT: Is that correct, Mr. Niskar?

17 | MR. NISKAR: That is correct.

18 | THE COURT: And the California information, the plea  
19 | would be to Count 1 of the information; is that correct?

20 | MS. MCCULLOUGH: That is correct, Your Honor. And  
21 | with respect to the California case, Jon Baum will be handling  
22 | that aspect of the case, Your Honor.

23 | THE COURT: Okay. Very good.

24 | Then in terms of explaining the charges against the  
25 | Defendant, why don't we start with Mr. Baum going over the

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1 charge to which the Defendant is going to plead guilty in the  
2 California case, and then Miss McCullough will go over the  
3 charges to which the Defendant is going to plead in the  
4 Michigan case, so.

5 MR. BAUM: Your Honor, the Defendant has been charged  
6 in Count 1 of the criminal information in Case Number 15-20311  
7 with one count of conspiracy to commit health care fraud in  
8 violation of Title 18 United States Code Section 1349.

9 THE COURT: Okay. A little bit louder would help and  
10 a little slower would help Ms. Lizza too. Thank you.

11 MR. BAUM: The statutory -- the statutory maximum  
12 penalty for Count 1 is 20 years imprisonment, a fine of  
13 \$250,000 or twice the pecuniary gain, or loss, pursuant to  
14 Title 18 United States Code Section 3571 and a three-year term  
15 of supervised release.

16 THE COURT: Okay. You understand, Doctor, those are  
17 the charges against you on the California case?

18 THE DEFENDANT: I do.

19 THE COURT: Can you also explain what the conduct is  
20 in that count that you're alleging Dr. Sabit committed, in  
21 terms of it can be a summary because I would presume that he's  
22 gone over the matter completely with his attorneys. Is that  
23 correct, Mr. Niskar?

24 MR. NISKAR: That's correct.

25 THE COURT: Mr. Lessing?

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1 MR. LESSING: Yes.

2 THE COURT: Okay.

3 MR. BAUM: I will provide the Court with a summary,  
4 Your Honor.

5 THE COURT: Okay.

6 MR. BAUM: Prior to moving to Michigan, Dr. Sabit was  
7 a resident of Ventura, California, within the Central District  
8 of California.

9 THE COURT: That's V-E-N-T-U-R-A.

10 MR. BAUM: Yes, Your Honor.

11 Dr. Sabit was also a licensed neurosurgeon in  
12 California. In approximately February, 2010, Dr. Sabit became  
13 involved with Apex, A-P-E-X, Medical Technologies, LLC while he  
14 was on the staff of a California hospital.

15 Apex was owned by another neurosurgeon and three  
16 nonphysicians who operated Apex as a physician-owned  
17 distributorship and paid neurosurgeons lucrative illegal  
18 kickbacks tied directly to the volume and complexity of the  
19 surgeries that the surgeons performed and the number of Apex  
20 spinal implant devices that the surgeons used in their spine  
21 surgeries.

22 In exchange for an opportunity to invest in Apex and  
23 share in its profits, Dr. Sabit agreed to convince his hospital  
24 to buy spinal implant devices from Apex and use a sufficient  
25 number of Apex spinal implant devices in his spine surgeries.

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1 Dr. Sabit and Apex's co-owners used Apex to operate an illegal  
2 kickback scheme. In doing so, they, among other things,  
3 concealed Dr. Sabit's involvement in Apex from outsiders.  
4 Dr. Sabit then required the hospital and surgical centers where  
5 he and his fellow neurosurgeons performed surgeries to purchase  
6 spinal implant devices from Apex.

7 Dr. Sabit's involvement in Apex and the financial  
8 incentives provided to him by Apex and his co-conspirators at  
9 times caused him to compromise his medical judgment and cause  
10 serious bodily injury to his patients by performing medically  
11 unnecessary spine surgeries on some of his patients in whom he  
12 implanted Apex spinal implant devices. On a few occasions, the  
13 money that Dr. Sabit made from using Apex spinal implant  
14 devices motivated him either to refer patients in for spine  
15 surgery who did not need surgery or refer his patients for more  
16 complex surgeries, such as multilevel spine fusions, which the  
17 patients did not need.

18 The financial incentives provided to Dr. Sabit by Apex  
19 and his co-conspirators at times caused him to overinstrument  
20 his patients or use more spinal implant devices than were  
21 medically necessary to treat his patients in order to generate  
22 more sales revenue for Apex which also resulted in serious  
23 bodily injury to his patients.

24 All of the surgeries that Dr. Sabit performed using  
25 Apex spinal implant devices were predicated on illegal

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1 kickbacks and false statements which made all those claims  
2 false and fraudulent.

3 THE COURT: Okay. Doctor, you understand what the  
4 charge is against you?

5 THE DEFENDANT: I do.

6 THE COURT: Okay. Is your willingness to plead guilty  
7 with regard to this charge, we'll take this one first, under  
8 the Rule 11 plea agreement -- have you been coerced to plead  
9 guilty?

10 THE DEFENDANT: I have not.

11 THE COURT: You understand the maximum period of  
12 incarceration under the statute and also the maximum fine  
13 possibility. You understand that?

14 THE DEFENDANT: I do, Your Honor.

15 THE COURT: Okay. And then, also, there would be a  
16 period of supervised release following any incarceration. You  
17 understand that?

18 THE DEFENDANT: I do.

19 THE COURT: And, Mr. Baum, did we talk about the  
20 period of supervised release?

21 MR. BAUM: I believe I mentioned that the period of  
22 supervised release for this offense was three years, Your  
23 Honor.

24 THE COURT: Okay. So you understand after any  
25 incarceration, you're out on supervised release and at that

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1 point if you violate that, you could be brought back and sent  
2 to jail for up to another three years. You understand that?

3 THE DEFENDANT: I do, Your Honor.

4 THE COURT: Okay. So you are pleading guilty pursuant  
5 to a Rule 11 plea agreement that came about after discussions  
6 between you, your attorneys and the attorneys for the  
7 government; is that correct?

8 THE DEFENDANT: That is.

9 THE COURT: Okay. Let me just look at the documents.

10 Under the total Rule 11 plea agreement, the guideline  
11 range -- counsel for the government can help me, as well as  
12 counsel for Defendant -- guidelines are but one factor among  
13 many the Court takes into account at the time of sentencing,  
14 but the guideline range is 108 to 135 months. Is that correct?

15 MS. MCCULLOUGH: Yes, Your Honor.

16 MR. NISKAR: Yes, Your Honor.

17 MR. LESSING: Yes, Your Honor.

18 THE COURT: There's also going to be a special  
19 assessment on all the counts, we can take that at one time, and  
20 that's \$600, a hundred dollars for each count. Understand  
21 that, Doctor?

22 THE DEFENDANT: I do.

23 THE COURT: And there's also a provision with regard  
24 to restitution to identifiable victims of your offense. You  
25 understand that, sir?



## PLEA HEARING

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1 THE DEFENDANT: I do, Your Honor.

2 THE COURT: There's also an exclusion from the  
3 Medicare program, other federal health care programs if you  
4 plead guilty under this Rule 11. Do you understand that,  
5 Doctor?

6 THE DEFENDANT: I do, Your Honor.

7 THE COURT: And if the Court accepts the Rule 11, then  
8 the government will dismiss all remaining charges in this case.  
9 Do you understand that?

10 THE DEFENDANT: I do.

11 THE COURT: And that's correct?

12 MS. MCCULLOUGH: Yes, Your Honor.

13 THE COURT: In entering this agreement, this does not  
14 compromise, which means prevent, the government from seeking  
15 any civil liability or administrative remedies against you.  
16 You understand that?

17 THE DEFENDANT: I do.

18 THE COURT: If I sentence you within the guideline  
19 range set forth before, then you waive any right to appeal the  
20 conviction or sentence. You understand that?

21 THE DEFENDANT: I do.

22 THE COURT: Except if there is the claim of  
23 ineffective assistance of counsel, then that is not waived on a  
24 basis for appeal. You understand that?

25 THE DEFENDANT: I do.

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1 THE COURT: And that's correct, Mr. Baum and  
2 Miss MacIntyre (sic), based on Attorney General Holder's  
3 statement, correct?

4 MS. MCCULLOUGH: Correct, Your Honor.

5 MR. BAUM: Yes, Your Honor.

6 THE COURT: And you understand the guidelines are but  
7 one of multiple factors the Court takes into account at the  
8 time of the sentencing under the statute. You understand that,  
9 sir?

10 THE DEFENDANT: I do, Your Honor.

11 THE COURT: Does the counsel for Defendant wish to  
12 place any further 11, Rule 11 provisions, on the record with  
13 regard to the California indictment?

14 MR. NISKAR: May I just have one second?

15 THE COURT: Sure.

16 (Short pause.)

17 MR. NISKAR: Nothing further as to the California  
18 information.

19 THE COURT: Okay. With regard to -- we already went  
20 over what's covered in the Rule 11 plea agreement. Apart from  
21 that, have I made you any promises of any sentence?

22 THE DEFENDANT: You have not.

23 THE COURT: Are there any side deals where your  
24 attorneys or the government attorney said, "Forget about what  
25 you say on the record but something else is going to happen"?

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1 You haven't got anywhere people promised you things other than  
2 what is placed on the record here?

3 MR. NISKAR: Your Honor, may we approach?

4 THE COURT: Sure.

5 (Whereupon a sealed bench conference was held.)

6 THE COURT: Let me ask you again, did anyone threaten  
7 or coerce you to plead guilty?

8 THE DEFENDANT: They did not.

9 THE COURT: Are you pleading guilty freely or  
10 voluntarily because you believe you are guilty?

11 THE DEFENDANT: I am, Your Honor.

12 THE COURT: Right now are you under probation, parole  
13 or inmate status for any other offenses besides what's charged  
14 here?

15 THE DEFENDANT: I'm not, Your Honor.

16 THE COURT: Okay. Please tell me what it is that you  
17 did during the period in California that leads you to believe  
18 you're guilty of the offense of conspiring to commit health  
19 care fraud.

20 THE DEFENDANT: I conspired with one other  
21 neurosurgeon and three other people to perform surgeries that  
22 were sometimes overinstrumented using a Apex brand of screws  
23 which resulted in illegal kickback scheme.

24 THE COURT: Okay. Mr. Baum, do you want to ask  
25 further questions to further establish a factual basis?

PLEA HEARING

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1 MR. BAUM: Yes.

2 THE COURT: Oh, first, what location, what city or  
3 state, did this take part?

4 THE DEFENDANT: This was in Ventura, California.

5 THE COURT: That's the Central District of California.  
6 And what period of time are we talking about?

7 THE DEFENDANT: From 2010.

8 THE COURT: Okay.

9 Proceed, Mr. Baum.

10 MR. BAUM: Dr. Sabit, were you part of Apex Medical  
11 Technologies between approximately February, 2010, through  
12 August of 2012?

13 THE DEFENDANT: I was.

14 MR. BAUM: And between approximately February of 2010  
15 and March of 2011 were you in the Central District of  
16 California?

17 THE DEFENDANT: I was.

18 MR. BAUM: In approximately March of 2011 through  
19 approximately August of 2012 were you in the Eastern District  
20 of Michigan?

21 THE DEFENDANT: I was.

22 MR. BAUM: During that time period did you perform  
23 surgeries both in the Central District of California and the  
24 Eastern District of Michigan on patients using Apex spinal  
25 implant devices?

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1 THE DEFENDANT: I did.

2 MR. BAUM: Was your use of Apex spinal implant devices  
3 in every surgery that you performed using those devices  
4 predicated on illegal kickbacks?

5 THE DEFENDANT: Yes.

6 MR. BAUM: Were they also predicated on false  
7 statements that were made to the Medicare program that you were  
8 going to be compliant with all Medicare rules and regulations  
9 including compliance with the Antikickback Statute?

10 THE DEFENDANT: Yes.

11 MR. BAUM: During your -- did your involvement in Apex  
12 Medical Sup -- or Technologies incentivize you to perform  
13 medically unnecessary surgeries at times on your patients?

14 THE DEFENDANT: Yes.

15 MR. BAUM: Did your involvement in Apex Medical  
16 Technologies at times incentivize you to overinstrument your  
17 patients?

18 THE DEFENDANT: Yes.

19 MR. BAUM: Did your -- and as a result of you  
20 performing medically unnecessary surgeries on your patients and  
21 using more -- or overinstrumenting your patients, did you at  
22 times cause serious bodily injury to your patients?

23 THE DEFENDANT: I did.

24 MR. BAUM: No further questions, Your Honor.

25 THE COURT: Okay. Does defense counsel wish to ask

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22

1 further questions to establish a factual basis?

2 MR. NISKAR: No. We're satisfied.

3 MR. LESSING: We're satisfied, Your Honor.

4 THE COURT: Okay. Thank you.

5 How do you plead, sir?

6 THE DEFENDANT: I plead guilty, Your Honor.

7 THE COURT: The Court finds the Defendant's plea as to  
8 the California indictment is knowingly, freely and voluntarily  
9 made. The elements of the offense to which he pleads guilty  
10 have been made out by his statements in court. The Court will  
11 accept the plea, take the Rule 11 under advisement.

12 And now let's proceed to the Michigan indictment.

13 That charges basically -- tell us, Miss --

14 MS. MCCULLOUGH: Yes, Your Honor.

15 THE COURT: Thank you.

16 MS. MCCULLOUGH: That charges -- Counts 1 through 4 of  
17 the first superseding information charges the Defendant with  
18 the violation of 18 U.S.C. Section 1347 which is substantive  
19 counts of health care fraud. Count 5 charges the Defendant  
20 with unlawful distribution of a controlled substance in  
21 violation of 21 U.S.C. Section 841(a)(1).

22 Your Honor, the penalties for Counts 1 through 4 are  
23 up to 20 years imprisonment, a \$250,000 fine and at least two  
24 years of supervised release. The penalties with respect to  
25 Count 5 are a million dollar fine and a lifetime term of

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23

1 supervised release. The parties have negotiated --

2 THE COURT: There is no incarceration period connected  
3 to Count 5?

4 MS. MCCULLOUGH: Yes, Your Honor. I apologize. Up to  
5 20 years as well.

6 THE COURT: Okay. Okay.

7 MS. MCCULLOUGH: And the parties have negotiated, Your  
8 Honor, a lifetime term of supervised release to be imposed with  
9 respect to Count 5.

10 With respect to particular supervised release term,  
11 the Defendant has agreed to be restricted from any employment  
12 in any capacity in the medical profession. That restriction  
13 will cover the practice of medicine, owning and operating a  
14 medical clinic, conducting any medical research, consulting as  
15 an expert, manufacturing or participating in the manufacturing  
16 of any medical devices, membership in any physician-owned  
17 distributorship and any employment in any capacity in any  
18 medical facility. And those are the penalties, Your Honor,  
19 with respect to Counts 1 through 4 and Count 5.

20 Would the Court like me to summarize the charges?

21 THE COURT: Please.

22 MS. MCCULLOUGH: Your Honor, Defendant, as I've  
23 already stated, is pleading guilty to the first superseding  
24 indictment, and it charges the Defendant with four counts of  
25 health care fraud.

## PLEA HEARING

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1 THE COURT: Information.

2 MS. MCCULLOUGH: Information, yes.

3 THE COURT: Okay. Thanks.

4 MS. MCCULLOUGH: Thank you, Your Honor.

5 With respect to that information, the Defendant  
6 engaged in a scheme and artifice to defraud Medicare, Medicaid  
7 and private insurance companies by convincing his patients to  
8 undergo spinal fusion surgeries with instrumentation which he  
9 never rendered then billing private and public health care  
10 benefit programs for these fraudulent services.

11 As part of the scheme, Your Honor, Dr. Sabit would  
12 operate on patients and dictate that he had performed a spinal  
13 fusion surgery with instrumentation which was never rendered.  
14 This invasive surgery would cause serious bodily injury to some  
15 of his patients. Sabit's operative reports and treatment  
16 records contained false statements about the procedure  
17 performed and the instrumentation used in the procedure.

18 Your Honor, on occasion Dr. Sabit dictated that he  
19 placed screws which, in fact, he did not place. Counts 1  
20 through 4 specifically outline four patients that underwent  
21 these procedures. Would the Court like me to go through each  
22 specific count?

23 THE COURT: Well, let me just ask. Mr. Niskar,  
24 Mr. Lessing, did you go over the particular names of the -- or  
25 the initials of the patients and where it was performed and



## PLEA HEARING

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1 what specifically was violated under the law in terms of the  
2 instrumentation and lack of instrumentation?

3 MR. LESSING: We did, Your Honor. We went through it  
4 with Dr. Sabit in detail.

5 THE COURT: Okay, then. Is that correct, Doctor, you  
6 have gone over that with them?

7 THE DEFENDANT: It is, Your Honor.

8 THE COURT: Then I don't think we need for you to go  
9 over that now. We'll just deal as we get to each count --

10 MS. MCCULLOUGH: Thank you, Your Honor.

11 THE COURT: -- as to what he did.

12 MS. MCCULLOUGH: And as to Count 5, Your Honor?

13 THE COURT: Yes.

14 MS. MCCULLOUGH: The information charges Defendant on  
15 October 22nd of 2012, Dr. Sabit did knowingly, intentionally  
16 and unlawfully distributed Schedule II prescription drug  
17 controlled substance, specifically Roxicodone, oxycodone, HCl,  
18 30 milligrams. Dr. Sabit committed offense by writing a  
19 prescription for a Schedule II controlled substance for no  
20 legitimate medical purpose and then he transferred the  
21 prescription to Patient 5 to be filled.

22 THE COURT: Okay. And you explained that to your  
23 client as well, Mr. Lessing and Mr. Niskar?

24 MR. LESSING: Yes, Your Honor.

25 MR. NISKAR: Yes, Your Honor.

## PLEA HEARING

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1 THE COURT: Is that correct, Doctor?

2 THE DEFENDANT: That is correct.

3 THE COURT: Then let's proceed to the various counts.  
4 The same Rule 11 applies with regard to the guideline,  
5 sentencing guidelines.

6 MS. MCCULLOUGH: They do, Your Honor, and if I may  
7 just go over paragraph 7 of that Rule 11 plea agreement.

8 THE COURT: Sure.

9 MS. MCCULLOUGH: The Court noted that there -- the  
10 government could pursue civil liability. The bottom portion of  
11 paragraph 7 of the Rule 11 pertains to civil liability for two  
12 cases pending out of California. And, Your Honor, with respect  
13 to those two cases only, the parties have agreed there will not  
14 be a restitution order entered with respect to those civil  
15 cases.

16 THE COURT: Okay. And is that correct, Mr. Niskar,  
17 Mr. Lessing? Sure.

18 MR. LESSING: Just one moment, Your Honor.

19 THE COURT: Okay.

20 MR. NISKAR: May we have one second?

21 THE COURT: Sure.

22 (Short pause.)

23 MS. MCCULLOUGH: Your Honor, if we could just have one  
24 moment. I apologize.

25 THE COURT: Yeah, that's fine.

## PLEA HEARING

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1 (Discussion held off the record between counsel at  
2 4:42 p.m.)

3 MR. NISKAR: Just one second, Your Honor. We're  
4 making a change.

5 THE COURT: Okay.

6 (Short pause.)

7 MR. LESSING: Your Honor, you have the original copy  
8 of the --

9 THE COURT: I believe there it is.

10 MR. LESSING: Great. We're going to need to make a  
11 quick change.

12 THE COURT: That's fine.

13 (Short pause.)

14 MR. LESSING: Thank you for your patience, Your Honor.

15 THE COURT: No problem.

16 MS. MCCULLOUGH: Your Honor, with respect to  
17 paragraph 7, the parties have amended it to state specifically:  
18 In light of the parties' intention to resolve all pertinent  
19 pending civil actions including *United States versus Reliance*  
20 *Medical Systems* and *United States ex rel. versus -- Savitch*  
21 *et al.* --

22 THE COURT: S-A-V-I-T-C-H, right.

23 MS. MCCULLOUGH: Yes. The parties agree that there  
24 will not be a separate restitution order as to the Defendant,  
25 Dr. Sabit, as part of the resolution of the above referenced

## PLEA HEARING

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1 cases. And the parties agree that the appropriate disposition  
2 of the civil cases does not include civil judgments. And all  
3 parties initialed, Your Honor.

4 THE COURT: Okay.

5 MR. LESSING: And for the record, Dr. Sabit has signed  
6 that paragraph.

7 THE COURT: You've read that and you understand that,  
8 Doctor?

9 THE DEFENDANT: I do.

10 THE COURT: Okay. Very good.

11 MS. MCCULLOUGH: Thank you, Your Honor. We appreciate  
12 that time.

13 THE COURT: No problem. Then let us proceed to the  
14 various counts and to the -- let's go to the first count that  
15 relates to, I believe that's Patient Number 1 who underwent  
16 spinal surgery around February of 2012, and in the report that  
17 you purportedly performed procedures, performed a fusion with  
18 instrumentation at the L4-L5 and S1 levels and utilized, you  
19 stated, the Zimmer, Z-I-M-M-E-R, transfacet,  
20 T-R-A-N-S-F-A-C-E-T, screw system when, in fact, that you did  
21 not place that medical device and, nevertheless, caused billing  
22 to get \$26,067 for that surgery and submitted the claims.

23 How do you plead as to that count, sir?

24 THE DEFENDANT: Guilty.

25 THE COURT: Okay. Please tell me what it is that you

## PLEA HEARING

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1 did in around February, 2012, that leads you to believe you're  
2 guilty of that count.

3 MR. NISKAR: One second, please.

4 (Discussion held off the record between the Defendant and  
5 counsel at 4:49 p.m.)

6 THE DEFENDANT: Your Honor, on February 29, 2012, I  
7 operated on a patient. In my dictation I stated I --

8 THE COURT: A little louder, a little slower because  
9 Ms. Lizza has to take down every word, so slower. Thanks.

10 THE DEFENDANT: In my dictation I stated that I used a  
11 Zimmer transfacet screw. I did not use a transfacet screw, and  
12 I did not perform a fusion using a Zimmer transfacet screw. I  
13 dictated a note stating that I had done the above and submitted  
14 that as a bill.

15 THE COURT: And you got paid by Medicare, Medicaid?

16 THE DEFENDANT: That is correct.

17 THE COURT: Any questions you want to -- and this was  
18 in what city?

19 THE DEFENDANT: This was in Pontiac, Michigan.

20 THE COURT: Okay. That's the Eastern District of  
21 Michigan.

22 Any questions you want to further ask?

23 MS. MCCULLOUGH: Just --

24 THE COURT: -- with regard to Count 1?

25 MS. MCCULLOUGH: Just one, Your Honor.

## PLEA HEARING

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1 THE COURT: Okay.

2 MS. MCCULLOUGH: You knew when you submitted the claim  
3 or caused the claim to be submitted that it was false?

4 THE DEFENDANT: That's correct.

5 MS. MCCULLOUGH: Thank you, Your Honor.

6 THE COURT: Let's go to Count 2. You've read these  
7 counts, so why don't you just say what it is that you did on or  
8 about April, 2012, that leads you to believe you're guilty of  
9 health care fraud with regard to Count 2, Doctor.

10 THE DEFENDANT: On April 13th of 2012 I operated on a  
11 patient in Sinai-Grace Hospital, which is in Detroit, Michigan.  
12 I dictated that I operated at L4-L5 and S1 levels using the  
13 Zimmer transfacet screw system. I did not use the Zimmer  
14 transfacet screw system, and I did not perform a fusion using  
15 the Zimmer transfacet screw system. I billed Medicaid in the  
16 amount of \$28,605 and was paid some amount of money for what I  
17 had dictated.

18 THE COURT: And you knew that your statements were  
19 false?

20 THE DEFENDANT: That's correct, Your Honor.

21 THE COURT: And you made them to receive the money  
22 from the government?

23 THE DEFENDANT: That's correct, Your Honor.

24 THE COURT: Any further questions from the government  
25 to --

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1 MS. MCCULLOUGH: No questions, Your Honor.

2 THE COURT: How do you plead as to that?

3 THE DEFENDANT: I plead guilty.

4 THE COURT: Did I go over the thing as to previous  
5 count?

6 MR. NISKAR: I don't think you asked him how he plead  
7 to Count 1.

8 THE COURT: As to Count 1, going back to that, how do  
9 you plead as to Count 1 which dealt with --

10 MR. LESSING: Patient 1, Your Honor.

11 THE COURT: -- Patient 1?

12 THE DEFENDANT: I plead guilty, Your Honor.

13 THE COURT: The Court finds, as to Count 1, the  
14 Defendant's statements has met the elements, required elements  
15 of the offense, knowingly, freely, voluntarily made, and the  
16 Court will accept the plea to Count 1, plea of guilty, and  
17 we'll take the Rule 11 under advisement.

18 As to Count 2 which dealt with Patient Number 2, how  
19 do you plead as to that?

20 THE DEFENDANT: Guilty, Your Honor.

21 THE COURT: Okay. As to that, the Court finds the  
22 Defendant's statements are knowingly, freely and voluntarily  
23 made. The elements of the offense to which he pleads guilty  
24 has been made out by his statements in court. The Court will  
25 accept the plea, take the Rule 11 under advisement.

## PLEA HEARING

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1           Let's go to Count 3. That deals with Patient  
2       Number 3. Please tell me what it is that you did on or about  
3       March of 2012 with regard to Patient Number 3 that leads you to  
4       believe you're guilty of health care fraud.

5           THE DEFENDANT: On March 21, 2012, I operated on this  
6       patient in Pontiac, Michigan. Again, I dictated a report  
7       stating that I had performed a fusion at the L4-L5 level using  
8       the Zimmer transfacet screw system when, in fact, I had not  
9       done that. I submitted the bill to Blue Cross for \$20,383 and  
10      was paid some amount of that and I did this knowing that I was  
11      making a false statement.

12          THE COURT: Okay. Any questions the government wants  
13      to ask to further establish a factual basis?

14          MS. MCCULLOUGH: The government is satisfied with the  
15      factual basis, Your Honor.

16          THE COURT: How do you plead as to Count 3?

17          THE DEFENDANT: Guilty.

18          THE COURT: The Court finds the Defendant's plea as to  
19      Count 3 is knowingly, freely, voluntarily made. The elements  
20      of the offense to which he pleads guilty have been made out by  
21      his statements in court. The Court will accept the plea to  
22      Count 3, take the Rule 11 under advisement.

23          Let's go to Count 4 which deals with Patient Number 4.

24          THE DEFENDANT: On March 31, 2012, I operated on a  
25      patient in Lapeer, Michigan. I dictated that I had performed



## PLEA HEARING

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1 an instrumented fusion at L4-5 and S1 using the Zimmer  
2 transfacet screw system. I had not done this yet I dictated  
3 this. I submitted this bill to Medicaid and was, again, paid  
4 some amount of what I had billed, and I did this knowing that I  
5 had not, in fact, done this above operation.

6 THE COURT: So you had submitted fraudulent statements  
7 in the billing to receive the payment, correct, Doctor?

8 THE DEFENDANT: That's correct.

9 THE COURT: Okay. Any questions that the government  
10 wishes to further ask with regard to Count 4?

11 MS. MCCULLOUGH: No, Your Honor. Government is  
12 satisfied with factual basis.

13 THE COURT: How do you plead, sir, as to Count 4?

14 THE DEFENDANT: I plead guilty.

15 THE COURT: The Court finds Defendant's plea is  
16 knowingly, freely, voluntarily made. The elements of the  
17 Count 4 have been made out by his statements in court. The  
18 Court accepts the plea to Count 4, take the Rule 11 under  
19 advisement.

20 Count 5 charges unlawful distribution of a controlled  
21 substance. Please -- what is the factual basis for this  
22 offense?

23 THE DEFENDANT: On October 22, 2012, I prescribed  
24 oxycodone, 30 milligrams, to a patient who did not need the  
25 medication. Wrote the prescription out in his name, and he

## PLEA HEARING

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1     presumably filled the prescription.

2             THE COURT:   Okay.   And you did it for no legitimate  
3     medical purpose, the prescription?

4             THE DEFENDANT:   That's correct.

5             THE COURT:   Okay.   And this occurred in what city?

6             THE DEFENDANT:   Probably Southfield, Michigan.

7             THE COURT:   That's Eastern District of Michigan.

8             And you knew that oxycodone was a controlled narcotic;  
9     is that correct?

10            THE DEFENDANT:   That's correct.

11            THE COURT:   Okay.   Any questions the government wants  
12     to ask to further establish a factual basis?

13            MS. MCCULLOUGH:   No, Your Honor.   Government is  
14     satisfied with the factual basis.

15            THE COURT:   Okay.   How do you plead as to Count 5,  
16     sir?

17            THE DEFENDANT:   Guilty.

18            THE COURT:   The Court finds the Defendant's plea is  
19     knowingly, freely and voluntarily made.   The elements of the  
20     offense to which he pleads guilty have been made out by his  
21     statements in court.   We'll accept the guilty plea, take the  
22     Rule 11 under advisement and we'll refer you to the probation  
23     department for a presentence report.

24            And, Ms. Tofil, if you help us with a sentencing date,  
25     we will conclude this proceeding.

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1 THE COURT CLERK: September 15th at 1:00 p.m.

2 THE COURT: Okay. Very good.

3 Anything further from the government?

4 MR. BAUM: Your Honor, just to be clear, did the Court  
5 discuss the appellate waiver with the Defendant?

6 THE COURT: I did at the initial get-go, yes.

7 MR. BAUM: I apologize, Your Honor.

8 THE COURT: That covers the plea agreement. It's a  
9 single plea agreement --

10 MR. BAUM: Thank you.

11 THE COURT: -- both indictments. Informations, sorry.  
12 Anything further from the defense?

13 MR. NISKAR: Not on behalf of Dr. Sabit.

14 MR. LESSING: No, Your Honor.

15 THE COURT: Thank you. We are concluded.

16 MS. MCCULLOUGH: Thank you, Your Honor.

17 (Proceedings concluded, 4:57 p.m.)

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## CERTIFICATION OF REPORTER

I, Leann S. Lizza, do hereby certify that the above-entitled matter was taken before me at the time and place hereinbefore set forth; that the proceedings were duly recorded by me stenographically and reduced to computer transcription; that this is a true, full and correct transcript of my stenographic notes so taken; and that I am not related to, nor of counsel to either party, nor interested in the event of this cause.

S/Leann S. Lizza6-3-2015

Leann S. Lizza, CSR-3746, RPR, CRR, RMR

Date